

# Nevada

## WATER RIGHTS FACT SHEET

August 15, 2001

### **Water Rights System:**

Nevada water law is founded on the doctrine of prior appropriation, or "first in time - first in right". Nevada law explicitly states that all waters of Nevada are public property, and a water right is a right to put that water to beneficial use. Beneficial use is the basis of a water right in Nevada. Nevada water law is set forth in the Nevada Revised Statutes, Chapters 532 through 538.

### *Responsible Agency:*

The Nevada Water Resources Division, headed by the State Engineer, is responsible for the administration and enforcement of Nevada's water law. This includes overseeing the appropriation, distribution, and management of the state's surface and groundwater.

### **Application Process:**

The only way to establish a new water right in Nevada is to file an application to appropriate water with the State Engineer (an application to change existing rights requires a similar process). A list of applications that can be filed in Nevada can be seen in Appendix One. Following the filing, the application is reviewed for completeness and compliance with required procedures. A legal notice, including the point of diversion (if applicable), is then prepared and advertized in a local newspaper for four consecutive weeks. Following the advertisement, there is a thirty day protest period. Any interested person may file a protest with the State Engineer. The protest should set forth the grounds on which the protest is being submitted and whether the protestant seeks denial of the application or conditional approval. If an application is protested, a formal hearing may be held in which the applicant and protestant presents their evidence to the State Engineer. The hearings are formal and all testimony is sworn and recorded.

The State Engineer considers the following three criteria when approving or rejecting an application:

1. Is there unappropriated water in the source?
2. Will the proposed use impair existing rights?
3. Is the proposed use detrimental to the public interest?

The State Engineer may also consider water quality issues, and he may place conditions upon the approved application to protect any interests.

Approved applications are granted a specific time period within which to develop the beneficial use of the water. Once the water has been put to beneficial use, the applicant is required to file proof with the State Engineer. The proof must detail the quantity of water used, the extent of uses, the exact location of the point of diversion, and other related information. Once proof has been filed, the State Engineer issues a certificate of appropriation and the water right is "certified" or "perfected". Any party disagreeing with the decision of the State Engineer may appeal to the district court of the county in which the decision applies.

Vested rights are rights that do not have to go through the application process. Vested rights to surface water are those rights for which the work to establish beneficial use was initiated prior to March 1, 1905 (the date of adoption of Nevada's water law). Vested rights from underground sources are those rights initiated prior to March 22, 1913, for artesian water and prior to March 22, 1939 for percolating water. The extent of all vested rights on a water source is determined through the adjudication process (see below).

Obtaining a water right in Nevada can take as little as a few months or as long as many years. It takes a minimum of two months to provide notice and allow for protest of an application. If there are no complications, the State Engineer can approve the application. However, if the application is protested or contains complications that need investigating, the State Engineer can take much longer to approve the application. Once the application has been approved, it is up to the permittee to complete the necessary work and file proofs which will result in the perfected water right. The time frame to obtain a perfected right once the application has been approved is dependant upon the work involved.

*Point of Diversion and Change of Use Procedures:*

In Nevada, a diversion is not a necessary component of a water right. The basis of a water right is beneficial use, and if the requested beneficial use necessitates a point of diversion, then it is required and must be specified in the application. Beneficial uses which do not necessitate a point of diversion may be granted, as is the case for instream flow rights.

The point of diversion, place of use, and purpose of use on a water right may be changed by filing a change application with the State Engineer. However, any change may not impair existing rights or be detrimental to the public interest. The process for approving a change application is similar to the application process discussed above.

*State Recognized Beneficial Uses:*

Beneficial use is the basis, the measure, and the limit of the right to use water. In Nevada, beneficial uses are determined on a case-by-case basis. The following have been accepted as beneficial uses, but recognized beneficial uses are not limited to these categories:

Commercial	Municipal
Construction	Power
Drilling	Recreation
Industrial	Stockwatering
Irrigation	Storage
Milling	Wildlife
Mining	

**Groundwater:**

The process for obtaining a groundwater right is similar to that for surface water (see above). New groundwater rights, however, may be restricted in Nevada if they will cause interference with preexisting wells. The State Engineer also has the authority to designate certain preferred uses when making groundwater appropriations, thus prior appropriation is not the strict doctrine for ground water use. In addition, domestic uses of groundwater (defined as water for one house), are exempt from the permitting process.

The general groundwater policy of the State Engineer is to limit water withdrawals from a basin to the average annual recharge for that basin. However, in basins where an outside source of supply is assured, the State Engineer may allow withdraws in excess of the annual recharge. To do this, the State Engineer designates the basin and issues temporary permits subject to revocation at a later date when water becomes available from an outside source. There are currently two designated basins in Nevada, the Las Vegas Artesian Basin and the Colorado River

Basin. In these basins, "temporary revocable permits" have been issued, and they may be revoked when Colorado River water becomes available.

### **Water Rights:**

Nevada law states that any "person" may appropriate water for beneficial use. A "person" may be an individual, group of individuals, organization, corporation, government agency, etc. Water rights in Nevada are considered real property and are protected as such. As a result, a water right can be conveyed or transferred. Water rights, however, are appurtenant to the land and are conveyed by deed with the land unless the seller specifically reserves the water right in the deed. When transferring ownership of a water right, a Report of Conveyance must be filed with the State Engineer.

A water right in Nevada can be lost only by abandonment. Abandonment is determined by the intent of the water user to stop using a water right and it does not have a statutory time period. Until recently, water rights could be lost by forfeiture which occurred if a right was not used for five consecutive years. This, however, has changed and water rights can now only be lost through voluntary abandonment. Water lost through abandonment reverts back to the public and is available for future appropriation.

### **Adjudications:**

The adjudication process in Nevada focuses on verifying and quantifying pre-statutory water rights, Native American Indian water rights, and federal reserved water rights. An adjudication of surface water claims, other than claims of Native American Indian or federal reserved rights, involves vested rights established before the enactment of Nevada's statutory water law in 1905. An adjudication of ground water claims involves vested rights established before 1913 for artesian groundwater and 1939 for claims to percolating groundwater. An adjudication is initiated by the State Engineer, either upon petition by a water user or by his own initiative. Claimants in an adjudication must file a proof of claim and pay a filing fee. The State Engineer determines the validity of claims through hearings and field investigations. A notice that an adjudication is proceeding must be published for a period of four consecutive weeks in a newspaper of general circulation within the boundaries of the stream system. Upon completion of the adjudication, the State Engineer produces an Order of Determination. The order is submitted to the court where it then goes through further hearings and is subject to objections at the judicial level. After judicial review, the court enters the final decree affirming or modifying the Order of Determination. This decree is final and conclusive and describes the limit and extent of all rights. The adjudication process can be summarized in the following ten steps:

1. One or more water users on a stream system may petition the State Engineer to begin adjudication proceedings. In the absence of a petition, the State Engineer may initiate the proceedings.
2. The State Engineer investigates facts and conditions concerning the stream system and determines if he will enter an order granting the petition.
3. If the petition is granted the State Engineer notifies all claimants and has a Notice of Order and Proceedings published for four weeks in a newspaper nearest the stream system.
4. The next step in the process is the filing of proofs and title reports by the claimants according to the schedule published in the notice of order for taking proofs.
5. From the evidence submitted during the period for taking proofs, a preliminary order of determination is prepared by the State Engineer. The preliminary order allocates the waters of the stream system to claimants having valid vested rights.
6. All evidence submitted during the period for taking proofs and used in preparing the preliminary order is subject to inspection in the office of the State Engineer by any claimant, for a period of 20 days or more.

7. The preliminary order of determination is subject to objections by any of the claimants, and if objections are filed a hearing is held before the State Engineer.
8. Next, an order of determination is prepared by the State Engineer and is submitted to all claimants and to the district court having jurisdiction. All evidence and maps are also forwarded to the district court.
9. Any claimant may file an exception to the order of determination and be heard before the district judge at a hearing.
10. The district judge then enters findings of fact, conclusions of law and the decree, which determines the water rights on the stream system.

#### *Ongoing Adjudications:*

Decreed and ongoing adjudications are listed at <http://water.nv.gov/Adjudications/adj-listing.htm>.

#### **Instream Flows:**

Although no statutory law protects instream flows in Nevada, judicial determination has recognized it as a beneficial use. Nevada's instream flow program is based on a court decree in 1988 involving the Bureau of Land Management. The dispute in the case (Nevada v. Morros) was over whether or not the BLM could apply for and hold a water right for recreational and wildlife purposes on a lake within its jurisdiction. Opponents argued that a right could not be granted because the use did not involve a physical diversion. The Nevada Supreme Court found that a physical diversion was not necessary to establish a water right. The decision upheld the right to appropriate water for instream flow under state law for fish, wildlife, and recreation.

Instream flow rights in Nevada can be established either through new appropriation or through a water right transfer. Transfers can be a temporary or permanent change from the original use to an instream flow right. Historically transfers have been commonly used in Nevada to establish instream flow through the purchase of existing rights to provide water for state and federal wildlife refuges. Applications to establish an instream flow water right, either from a transfer or through a new appropriation, must go through the application process discussed above.

#### *Recognized Beneficial Uses for Instream Flow:*

Nevada has recognized wildlife (including fish) and recreation as beneficial uses for instream flow. Since beneficial uses are determined on a case by case basis, however, uses for instream flow are not necessarily limited to these categories.

#### *Holdership of Instream Flow Water Rights:*

According to state law "any person" may appropriate water for beneficial use. "Any person" includes individuals, private organizations, and government agencies. It appears that any entity which can hold a water right in Nevada is permitted to hold an instream flow right.

#### **BLM Specific Information:**

The BLM in Nevada is currently involved in the Walker River Adjudication. This process is just beginning and the state office will be working on this issue in the future. The BLM has filed the paperwork to assert federal claims in this basin, but no further progress has been made on the issue.

Federal reserved water rights for the BLM in Nevada are primarily limited to Public Water Reserves (PWR). There are no Wild and Scenic Rivers on BLM land in Nevada. In addition, the ten new wilderness areas in Nevada explicitly excluded federal reserved water rights. The BLM has a large number of Public Water Reserve (PWR) 107s. In order to assert these rights, the

BLM files a notification with the state engineer's office and pays a notification fee of \$50. PWRs other than 107s are sight specific and Nevada has approximately 110 of these.

The relationship between the BLM and the State of Nevada can be characterized as strained. After years of threatening, the BLM is enforcing trespassing laws related to grazing fees. This has angered States' rights advocates and has increased tensions between the Bureau and the state. In addition, the BLM has been involved in a state supreme court case over the BLM's right to hold stockwater rights. This case was recently decided in the BLM's favor. The BLM can now hold stockwater rights solely or jointly. This decision has settled the case, but has further served to stress the relationship. As the BLM asserts it's right to hold stockwater rights and to enforce the payment of grazing fees, the relationship between the State of Nevada and the BLM could further deteriorate.

**Official Contact:**

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<http://ndwr.state.nv.us/Home/sitemap.htm>

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**Appendix One: Types of Applications**

Water Rights Related Forms:

- \* Water Right Application - New
- \* Water right Application - Change
- \* Water Right Application - Temporary
- \* Water Right Application - Environmental
- \* Proof of Completion of Work
- \* Proof of Beneficial Use
- \* Resumption of Use
- \* Extension of Time
- \* Extension of Time to Prevent Forfeiture
- \* Proof of Use for Stockwater or Wildlife
- \* Proof of Appropriation for Irrigation
- \* Protest Form